

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**FILED**  
KING COUNTY, WASHINGTON

SEP 13 2018

EXPO7  
SUPERIOR COURT CLERK

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING  
PROVISIONS

**18-2-22880-8SEA**

PAPA JOHN'S INTERNATIONAL,  
INC. ASSURANCE OF  
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance (AOD) pursuant RCW 19.86.100.

**I. PARTIES**

1.1 In January 2018, the Attorney General initiated an investigation into Papa John's International, Inc. (PJI) relating to certain restrictive covenants in its franchise agreements.

1.2 PJI is a Delaware corporation with its principal office or place of business in Kentucky. PJI is in the business of operating a franchise system for pizza restaurants.

1.3 PJI includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

**II. INVESTIGATION**

1           2.1     PJI has 49 stores in Washington, all of which are owned and operated by  
2 franchisees.

3           2.2     Before November 2017, PJI included language in its franchise agreements that  
4 stated: “You covenant that you will not, during the Term and for a period of one year after  
5 expiration or termination of the Franchise, employ or seek to employ any person who is  
6 employed by us, our Affiliates or by any of our franchisees, or otherwise directly or indirectly  
7 solicit, entice or induce any such person to leave their employment.” The Attorney General  
8 deems this language to constitute a “no-poaching provision.”

9           2.3     However, in November 2017 – before the Attorney General initiated its  
10 investigation into PJI’s franchise agreements – PJI, on its own initiative, elected to remove the  
11 “no-poaching provision” from its standard franchise agreements nationwide on a going  
12 forward basis.

13           2.4     The Attorney General asserts that the inclusion of a no-poaching provision in  
14 franchise agreements constitutes a contract, combination, or conspiracy in restraint of trade in  
15 violation of the Consumer Protection Act, RCW 19.86.030.

16           2.5     PJI expressly denies that inclusion of its restrictive covenant language in  
17 franchise agreements constitutes a contract, combination, or conspiracy in restraint of trade in  
18 violation of the Consumer Protection Act, RCW 19.86.030, or any other law. PJI also  
19 expressly denies it has engaged in conduct that constitutes a contract, combination, or  
20 conspiracy in restraint of trade because (a) it has not enforced the no-poaching provision in the  
21 State of Washington; (b) it has not routinely enforced the no-poaching provision outside of  
22 Washington; and (c) it has already removed the restrictive covenant language from its standard  
23 franchise agreements going forward. Nevertheless, PJI enters into this AOD to memorialize  
24 the understandings between the parties.. Pursuant to RCW 19.86.100, neither this AOD nor its  
25 terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on  
26 the part of PJI.

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1 Subject to paragraph 2.5 above, PJI affirms that:

3 3.1.1. it will not include no-poaching provisions in any of its future franchise  
4 agreements;

5 3.1.2. it will not enforce no-poaching provisions in any of its existing franchise  
6 agreements, and will not seek to intervene or defend in any way the legality of any no-poach  
7 provision in any litigation in which a franchisee may claim third-party beneficiary status rights  
8 to enforce an existing no-poaching provision;

9 3.1.3. it will notify all of its Washington franchisees of the entry of this AOD  
10 and provide them a copy;

11 3.1.4. it will notify the Attorney General's Office if it learns of any effort by a  
12 Washington franchisee to enforce any existing no-poaching provision.

13 3.2 Within 60 days of entry of this AOD, PJI will have amended all existing  
14 franchise agreements with entities in Washington to remove any no-poaching provisions in its  
15 existing franchise agreements. If any franchise owner is unwilling to consent to the change to  
16 its franchise agreement, or if any franchise owner demands other material changes to the  
17 franchise agreement as part of any request to remove the no-poaching provision (which  
18 material changes are unacceptable to PJI), PJI shall provide the name and address of the  
19 resisting franchisee and the name and address of the franchisee's registered agent to the Office  
20 of the Attorney General.

21 3.3 As they come up for either renewal or renegotiation during the ordinary course  
22 of business, PJI affirms that, to the extent PJI renews a franchise, it will renew those franchises  
23 on forms of franchise agreements that do not contain any no-poaching provision.

24 3.4 Within 30 days of the conclusion of the time periods referenced in Sections  
25 3.1.3 and 3.2, PJI will submit a declaration to the Attorney General's Office signed under  
26 penalty of perjury stating that those provisions of this agreement have been satisfied.

1 IV. ADDITIONAL PROVISIONS

2 4.1 This AOD is binding on, and applies to PJI, including each of its respective  
3 directors, officers, managers, agents acting within the scope of their agency, and employees, as  
4 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,  
5 affiliates, partnerships, and joint ventures, or other entities through which PJI may now or  
6 hereafter act with respect to the conduct alleged in this AOD.  
7

8 4.2 This is a voluntary agreement and it shall not be construed as an admission of  
9 law, fact, liability, misconduct, or wrongdoing on the part of PJI. By entering into this AOD,  
10 PJI neither agrees nor concedes that the claims, allegations and/or causes of action which have  
11 or could have been asserted by the Attorney General have merit and PJI expressly denies any  
12 such claims, allegations, and/or causes of action. However, proof of failure to comply with this  
13 AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the  
14 violator the burden of defending against imposition by the Court of injunctions, restitution,  
15 costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per violation.

16 4.3 PJI will not, nor will it authorize any of its officers, employees, representatives, or  
17 agents to, state or otherwise contend that the State of Washington or the Attorney General has  
18 approved of, or has otherwise sanctioned, the conduct described in paragraph 2.2, with respect to  
19 the no-poaching provision in PJI's franchise agreement.

20 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust  
21 Division of the Attorney General's Office under the Consumer Protection Act and any other  
22 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.5 above that may have occurred  
23 before the date of entry of this AOD and concludes the investigation thereof. Subject to  
24 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's  
25 Office shall not file suit or take any further investigative or enforcement action with respect to the  
26 acts set forth above that occurred before the date of entry of this AOD, or that occurs between the

1 date of the entry of this AOD and the conclusion of the 60 day period identified in paragraph 3.2  
2 above, against PJI or any of its current franchisees in the State of Washington that sign the  
3 proposed amendment. The Attorney General reserves the right to take further investigative or  
4 enforcement action against any current franchisee in the State of Washington that does not  
5 consent to the proposed amendment.

6  
7 APPROVED ON this \_\_\_\_\_ day of 9/13, 2018.

8 **HENRY H. JUDSON**

9 SEP 13 2018

10   
JUDGE/COURT COMMISSIONER

11 COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

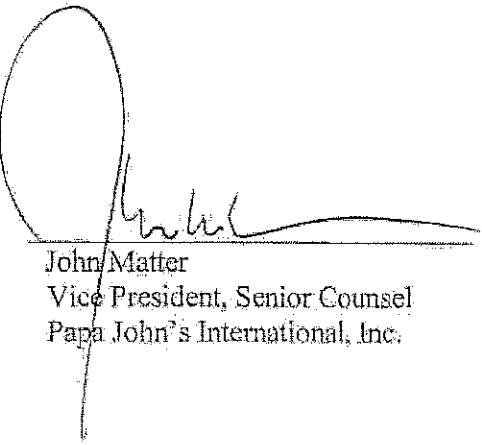
4 \_\_\_\_\_  
5 ERIC S. NEWMAN, WSBA #  
6 Assistant Attorney General  
7 Chief Litigation Counsel  
8 Antitrust Division  
9 Attorneys for State of Washington  
10 Office of the Attorney General  
11 800 Fifth Avenue, Suite 2000  
12 Seattle, WA 98104

11 Agreed to and approved for entry by:  
12 Papa John's International, Inc.

13 \_\_\_\_\_  
14 Nathan T. Alexander  
15 Dorsey & Whitney LLP  
16 701 5th Ave., #6100  
17 Seattle, Washington 98104

18 Attorneys for Papa John's  
19 International, Inc.

\_\_\_\_\_



John Matter  
Vice President, Senior Counsel  
Papa John's International, Inc.